

EXHIBIT 2

**REDACTED VERSION
OF DOCUMENT
SOUGHT TO BE SEALED**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
Case No. 3:17-cv-00939-WHA

WAYMO LLC,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC.; OTTOMOTTO
LLC; OTTO TRUCKING LLC,
Defendants.

_____ /

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF CRAIG CLARK

FRIDAY, DECEMBER 22, 2017

Reported by:

Kelli Ann Willis, RPR, CRR

JOB No. 2780742

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1	person's name, I would know her. Julie, I want to	10:00:15
2	say. I know -- yeah, beyond that, I would be	10:00:20
3	guessing.	10:00:31
4	Q. Did you have any interaction with the ATG	10:00:32
5	group while you were at Uber?	10:00:34
6	MR. STUMPHAUZER: Object to form.	10:00:38
7	THE WITNESS: So, interaction, I've seen	10:00:39
8	presentations. I've -- I've worked with -- I	10:00:43
9	worked with people in ATG on -- what have I	10:00:48
10	worked with ATG on? There was -- there was	10:00:56
11	some penetration testing that was done	10:01:00
12	vis-a-vis the -- kind of their -- like,	10:01:02
13	facilities.	10:01:05
14	There was an encampment of homeless people	10:01:07
15	near Harrison Street that was camped out in	10:01:13
16	their -- in the area, and I was -- and they	10:01:15
17	solicited some advice from me.	10:01:19
18	BY MS. TARAIZI:	10:01:22
19	Q. You said that you have seen presentations	10:01:22
20	made by ATG; is that correct? Did I recall that	10:01:32
21	correctly?	10:01:35
22	A. Yes.	10:01:35
23	Q. Have you ever given presentations to the	10:01:36
24	ATG group?	10:01:37
25	A. No.	10:01:38

1 at the meeting, or small kind of admin something. I 12:08:57

2 don't require -- I don't recall -- I don't recall 12:09:01

3 using that, like, being a power user. 12:09:06

4 Q. What were the default retention settings 12:09:10

5 at UChat? 12:09:14

6 A. I don't know. I think at one point it 12:09:15

7 was -- I think it varied. I think UChat was -- 12:09:16

8 you'd have to talk to the Uber company person. 12:09:22

9 Q. Did you use HipChat? 12:09:27

10 A. I did. 12:09:28

11 Q. What did you use HipChat for? 12:09:29

12 A. The same way I used UChat: infrequently. 12:09:31

13 It's a terrible product. Horribly insecure. 12:09:34

14 Q. "Horribly insecure," what does that mean? 12:09:38

15 A. It means that the communication platform 12:09:41

16 itself is not secure. It's been hacked multiple 12:09:43

17 times. 12:09:46

18 Q. Is UChat secure? 12:09:48

19 A. I don't know. I'm not a security -- I'm 12:09:51

20 not a security expert, but I'm not aware of 12:09:54

21 compromises of UChat. 12:09:57

22 Q. Have you used Wickr? 12:09:59

23 A. Yes. 12:10:00

24 Q. And what did you use Wickr for? 12:10:01

25 A. I used Wickr for everything from 12:10:03

1 Q. How many such discussions? 12:16:26

2 A. I don't know. Twenty. 12:16:28

3 Q. And what instructions did you give 12:16:29

4 employees regarding when to use a particular 12:16:31

5 communications platform as opposed to another 12:16:34

6 communications platform? 12:16:36

7 A. If you are -- if you are on legal hold, 12:16:37

8 you can't use ephemeral communications. 12:16:40

9 Q. Is that the only instruction that you ever 12:16:44

10 provided to Uber employees regarding the use of 12:16:46

11 ephemeral communications? 12:16:52

12 A. I don't know. To the best of the 12:16:59

13 recollection, that's the one that sticks out I would 12:17:04

14 tell people. 12:17:06

15 Q. Did you ever instruct employees to use 12:17:09

16 ephemeral communications platforms in order to avoid 12:17:12

17 the retention of such communications? 12:17:16

18 A. Absolutely not. 12:17:18

19 Q. I think I asked you about the retention -- 12:17:38

20 the default retention of UChat, and I think you said 12:17:44

21 you don't know what the default retention period 12:17:47

22 was; is that correct? 12:17:50

23 A. I don't know for sure. It has changed, 12:17:52

24 but I think at one point it was maybe seven days. 12:17:54

25 But I'm not -- but I'm not certain. 12:17:59

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1 be done through technical investigation, but then, 12:24:19
2 ultimately, you need to sit down with the person and 12:24:21
3 talk. Oftentimes, it's, like, No, I did have a 12:24:23
4 legitimate reason for looking at this. 12:24:26

5 So, that's why I would use Oscar. 12:24:28

6 Q. Did you use Oscar for any other 12:24:33
7 investigations? 12:24:35

8 A. Not that I recall. 12:24:36

9 Q. Did you use Oscar for any investigations 12:24:36
10 into Google or Waymo? 12:24:39

11 A. No. 12:24:41

12 Q. Did you communicate with Oscar using 12:24:45
13 Wickr? 12:24:48

14 A. I did. 12:24:49

15 Q. Why did you communicate with Oscar using 12:24:50
16 Wickr? 12:24:51

17 A. It's a great secure communication 12:24:51
18 platform. 12:24:54

19 Q. What does "secure" mean? 12:25:06

20 A. Secure means end-to-end encrypted, and 12:25:08
21 it's ephemeral. The best -- the best -- the most 12:25:12
22 secure way to store something is to not have it. 12:25:18

23 Q. Did you use Oscar and TAL Global -- did 12:25:23
24 you communicate with Oscar and TAL Global via Wickr 12:25:27
25 to avoid your discussions being discovered by 12:25:35

1 government investigators or parties to this 12:25:38
2 litigation? 12:25:40
3 A. No. 12:25:40
4 Q. You were starting to say something there? 12:25:42
5 A. No, because I saw where you were going. 12:25:43
6 It's just -- let's continue. 12:25:45
7 Q. Do you find the question offensive? 12:25:57
8 A. I do. 12:25:59
9 Q. Why is that? 12:25:59
10 A. Because it's accusing me of -- I find it 12:26:00
11 accusatory. 12:26:03
12 Q. I'm handing you a document that we will 12:26:09
13 mark as Exhibit 9704. 12:26:12
14 (The referred-to document was marked by 12:26:24
15 the court reporter for Identification as 12:26:24
16 Deposition Exhibit 9704.) 12:26:24
17 BY MS. TARAIZI: 12:26:24
18 Q. When you find it accusatory, what do you 12:26:26
19 mean by that? 12:26:28
20 A. The question felt accusatory. 12:26:30
21 Q. Who is [REDACTED]? 12:26:47
22 A. Can I have a minute with the document? 12:26:50
23 Q. Sure. 12:26:52
24 A. [REDACTED], I don't know if he's a 12:27:37
25 principal or employee of [REDACTED]. 12:27:41

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1 A. I have. 02:29:19

2 Q. When did you instruct employees at Uber to 02:29:19
3 designate documents attorney-client privileged? 02:29:23

4 A. When they were seeking legal advice. 02:29:26

5 Q. Is that -- 02:29:31

6 A. And even if the specter of legal advice is 02:29:32
7 there, all right? So -- so, if I'm communicating -- 02:29:36
8 so this label thing is very interesting to me. 02:29:40

9 In that time, the way I see it, a label is 02:29:44
10 a tag, right? So, ultimately, privileged 02:29:46
11 determinations are made by judges. And they are 02:29:49
12 made by judges based on advocacy by the parties' 02:29:51
13 clients who are making decisions when they are 02:29:55
14 producing documents about what they think is 02:29:57
15 privileged or not privileged. 02:29:59

16 Whether something has a tag on it really 02:30:01
17 facilitates review: Hey, heads up, document 02:30:04
18 reviewers, this might be privileged. 02:30:08

19 So, I see where you're going with this 02:30:10
20 line, Counselor, and maybe I can short-circuit it 02:30:15
21 with that. Let's move on to your next question. 02:30:17

22 Q. Did you provide an instruction to anyone 02:30:24
23 at Uber to mark documents as attorney-client 02:30:27
24 privileged when you believed the documents were not 02:30:30
25 privileged? 02:30:35

1	all I'm asking.	02:32:51
2	MS. GOODMAN: Was it Uber's policy to tell	02:32:52
3	people to mark documents "attorney-client	02:32:55
4	privileged" if they were not privileged?	02:32:57
5	You can answer that question.	02:33:01
6	THE WITNESS: No.	02:33:06
7	BY MS. TARAIZI:	02:33:07
8	Q. Did you ever tell people to mark documents	02:33:07
9	as "attorney-client privileged" when they were not	02:33:09
10	privileged?	02:33:12
11	MR. STUMPHAUZER: The same issue.	02:33:13
12	MS. GOODMAN: You can answer that	02:33:15
13	question.	02:33:15
14	THE WITNESS: I'm sorry, you said I can	02:33:16
15	answer that question?	02:33:18
16	MS. GOODMAN: Did you ever tell people, as	02:33:19
17	a matter of policy, to mark documents as	02:33:21
18	"attorney-client privileged" when they were not	02:33:23
19	privileged?	02:33:25
20	THE WITNESS: You're saying I can answer	02:33:25
21	that question?	02:33:32
22	No.	02:33:33
23	MS. GOODMAN: If you want to find out what	02:33:40
24	he did, in fact, tell people, show him law dog	02:33:41
25	presentation that he's referenced multiple	02:33:46

1	times now.	02:33:49
2	MS. TARAIZI: We'll come to that.	02:33:49
3	BY MS. TARAIZI:	02:34:00
4	Q. Well, the law dog presentation, was that	02:34:01
5	the only presentation provided by Uber lawyers	02:34:02
6	regarding the topic of when to designate documents	02:34:08
7	"attorney-client privileged"?	02:34:12
8	MS. GOODMAN: Object to form.	02:34:13
9	THE WITNESS: I don't purport to have	02:34:16
10	knowledge of all of the presentations that	02:34:18
11	legal has given to everybody. I also don't	02:34:19
12	characterize what that presentation does.	02:34:23
13	BY MS. TARAIZI:	02:34:33
14	Q. Did you attend a meeting in Pittsburgh,	02:34:33
15	Pennsylvania, relating to the use of the	02:34:35
16	attorney-client privilege or dropped designations?	02:34:37
17	A. I've never been to Pittsburgh.	02:34:42
18	Q. So that's a no?	02:34:44
19	MS. TARAIZI: The court reporter is going	02:35:18
20	to hand you a document marked Exhibit 9709.	02:35:25
21	(The referred-to document was marked by	02:35:32
22	the court reporter for Identification as	02:35:32
23	Deposition Exhibit 9709.)	02:35:32
24	BY MS. TARAIZI:	02:35:44
25	Q. Mr. Clark, is that the law dog	02:35:44

1 MS. GOODMAN: To be clear, meta data may 02:37:21
2 be associated with these documents. You may 02:37:22
3 just not have it at your fingertips. 02:37:25
4 MS. TARAIZI: The question was, do you have 02:37:27
5 it, and I said I do not. 02:37:29
6 BY MS. TARAIZI: 02:37:32
7 Q. Did you create a version of this document 02:37:32
8 that did not have the Uber logo on it? 02:37:34
9 A. No. 02:37:37
10 Q. Did you ever give a presentation using a 02:37:37
11 deck similar to this that did not have the Uber logo 02:37:43
12 on it? 02:37:47
13 A. No. This page -- this first page is 02:37:47
14 always the same with the exception of dates. Some 02:37:50
15 of them may have been dated different, but... so, I 02:37:53
16 wouldn't always catch the date. But every version 02:37:57
17 of this presentation had the same slide. This is 02:37:59
18 the Uber slide of a woman walking on a sidewalk in 02:38:05
19 San Francisco, and it is notable because we often 02:38:11
20 joke about where she's going and what she's doing. 02:38:15
21 Q. How many times did you give a presentation 02:38:32
22 using this document? 02:38:33
23 A. Using this specific deck? I don't know. 02:38:35
24 Q. How many times did you give a presentation 02:38:39
25 using a version of this deck? 02:38:40

1 presentations, do you just recall discussing the 02:46:35
2 need for or the desire to provide this presentation 02:46:38
3 with anyone other than Mat Henley? 02:46:42
4 A. I'm sorry? 02:46:44
5 Q. Do you recall discussing this presentation 02:46:44
6 with anyone other than Mat Henley? 02:46:46
7 A. Yes. I discussed it with many people. 02:46:49
8 Q. What did you discuss about the 02:46:50
9 presentation? 02:46:52
10 A. Like use it. Other people in legal wanted 02:46:52
11 it. I was -- when I was putting it together, I was 02:46:55
12 asking around if anybody had created decks about 02:46:59
13 privilege, and people saying, Yeah, it's a great 02:47:02
14 idea, you should do it. 02:47:05
15 So, several people in litigation. I 02:47:06
16 talked to Sullivan about it, perhaps. Yeah, a lot 02:47:10
17 of people I talked to about the presentation. 02:47:17
18 Q. What did you talk to Sullivan about it? 02:47:19
19 A. I said I'm going to give a presentation. 02:47:21
20 Q. Did you tell him what the presentation was 02:47:28
21 about? 02:47:30
22 A. Yeah. I'm going give a legal overview. 02:47:31
23 Q. Did you tell him any more than that? 02:47:33
24 A. I don't recall. 02:47:35
25 Q. How much do you recall about what you told 02:47:39

1	people as you showed each slide?	02:47:42
2	A. Oh, quite a bit, probably.	02:47:44
3	Q. Why did you use dogs?	02:47:46
4	A. I love dogs. Do you not like dogs,	02:47:48
5	Counsel?	02:47:50
6	Q. It's not my deposition.	02:47:52
7	A. Okay.	02:47:53
8	Q. What -- let's turn to the fourth page.	02:47:56
9	It's marked 340308.	02:48:06
10	A. 340308?	02:48:11
11	Q. Yes.	02:48:15
12	A. Yes, I see it.	02:48:15
13	Q. You put: "Law! Equals Science"? What is	02:48:16
14	that?	02:48:20
15	A. Actually, it says: Law, Bang, Equals	02:48:21
16	Equal Science." That's Javascript for: Law does	02:48:23
17	not equal science.	02:48:27
18	Q. I learned something.	02:48:28
19	A. I'm presenting this --	02:48:28
20	Q. Exclamation point equal equal is the	02:48:33
21	"not," Javascript for --	02:48:35
22	A. Java script, does not equal. Bang. The	02:48:37
23	programmers use bang for their exclamation point.	02:48:41
24	"Bang equal equal" means "does not equal" in	02:48:45
25	Javascript.	02:48:49

1 You've got to understand, I'm dealing with 02:48:50
2 a lot of technical people, coders and things like 02:48:51
3 this. Another way I'm able to get rapport and work 02:48:55
4 with these people, have them come to me, is to try 02:48:58
5 to speak their language. They would typically laugh 02:49:00
6 at me when they see that. They'd go: Look at the 02:49:01
7 Javascript, the old guy trying to -- the old boy 02:49:02
8 trying to use Java script. 02:49:06

9 Q. And I clearly didn't understand it. I 02:49:06
10 definitely do not speak Javascript. 02:49:14

11 What did you mean by law "does not equal 02:49:15
12 science"? 02:49:16

13 A. So, again, I'm dealing with very technical 02:49:17
14 people who are -- they -- they probably think in 02:49:20
15 math and in equations, if you will. They like 02:49:25
16 answers that are absolute. And the law is anything 02:49:28
17 but absolute. The law is not math. The law is not 02:49:35
18 science. 02:49:40

19 Q. If you turn to the slide marked 340311? 02:49:43

20 A. 340311. Yes. 02:49:51

21 Q. It looks like a mock-up of an email with 02:49:57
22 an X over it. 02:50:01

23 A. Yes. Let me explain. So, most of these 02:50:02
24 slides, I wouldn't say most, but many of these 02:50:05
25 slides have had animation that's not reflected in 02:50:09

1 the printout. 02:50:12

2 Q. Okay. 02:50:13

3 A. So, carry on. 02:50:13

4 Q. What was the slide attempting to reflect? 02:50:19

5 A. So, I've got to back up a little bit. 02:50:23

6 So, I've gone through -- at this point, 02:50:26

7 I've gone through the elements of privilege, and 02:50:28

8 then I'm giving them -- I'm showing them emails, and 02:50:31

9 saying: Is this -- what do you guys think? 02:50:34

10 Privileged, not privileged? 02:50:37

11 Q. Underneath the X, it's a little tricky to 02:50:44

12 read, but it looks like the text of the email that 02:50:49

13 you have included in the presentation says, 02:50:52

14 "Attached are the" -- do you recall what this says? 02:50:54

15 A. No. 02:51:00

16 Q. "Attached are the" -- something. It looks 02:51:00

17 like it might be say, "numbers for last quarter." 02:51:04

18 Does that sound like it could be right? 02:51:07

19 A. Could be. 02:51:11

20 Q. "We need to discuss ASAP. I am marking 02:51:11

21 this attorney-client privilege due to sensitivity." 02:51:15

22 Obviously, quite a number of those letters 02:51:17

23 are blacked out, but does that sound right to you? 02:51:21

24 A. It sounds right. 02:51:23

25 Q. Then there's an X over that. 02:51:24

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1 Does that indicate that you informed the 02:51:27
2 attendees at the presentation that that email was 02:51:31
3 not privileged? 02:51:33

4 A. This is an example that I used to say -- 02:51:34
5 again, you have got to back up to the presentation. 02:51:36

6 So, at this point, I've kind of also 02:51:39
7 walked people through -- there's a lot of people who 02:51:41
8 aren't -- aren't Americans, either. You've got 02:51:46
9 people from all over. We're a very diverse group of 02:51:48
10 people. 02:51:51

11 So, I've given them a slight overview, a 02:51:51
12 quick overview of what -- of the litigation system 02:51:54
13 and the idea of privilege. 02:51:59

14 At this point, I've made -- I've already 02:52:00
15 said at least once or twice that we don't make these 02:52:02
16 determinations; judges make these determinations. 02:52:05

17 So, I'm up there. I give them this 02:52:08
18 hypothetical. I have them read it, and people raise 02:52:11
19 their hand. Okay, so, based upon what you've 02:52:13
20 learned so far, who thinks it's privileged? I get 02:52:16
21 the responses. And then the red X comes out. I 02:52:19
22 would make the determination that this is not 02:52:23
23 privileged. It is not concerning legal advice and 02:52:25
24 other elements are missing from it. 02:52:40

25 Q. What other elements are missing from it? 02:52:42

1 A. So, I'm not going to sit and analyze it, 02:52:45
2 but it doesn't look like it's -- the To and the 02:52:48
3 From, yeah. 02:52:52

4 Q. Well, I'm not asking you now, but I'm 02:52:54
5 interested in what you told the people who attended 02:52:57
6 the presentation as to why this would not be 02:53:00
7 privileged. 02:53:02

8 A. We should just get on the record that Uber 02:53:03
9 has waived privilege on this deck itself, correct? 02:53:05

10 MS. GOODMAN: You can discuss the contents 02:53:09
11 of this deck and the presentation you gave 02:53:11
12 surrounding the deck. 02:53:16

13 THE WITNESS: Okay. I'm sorry. Can you 02:53:17
14 ask your question again? 02:53:21

15 BY MS. TARAIZI: 02:53:23

16 Q. Sure. My question was: What did you tell 02:53:30
17 the attendees at your presentation as to why this 02:53:32
18 email was not privileged? 02:53:39

19 A. So I -- look, I didn't necessarily do 02:53:42
20 that. I've already given them all the -- all the 02:53:44
21 elements. And so, look, I don't -- when I'm 02:53:48
22 presenting, I try to be pretty dynamic. I don't 02:53:51
23 stick to -- I want to use images because it's my 02:53:55
24 firm belief, and the best presenters that I've ever 02:53:58
25 seen don't put words on PowerPoints. The presenter 02:54:00

1 presents the -- this should just be demonstrative. 02:54:03

2 So, at this point, I've given -- I've 02:54:07

3 gotten the poll. I've gotten everybody's idea. No 02:54:09

4 red Xs; let's go to the next one. 02:54:11

5 Q. So, if this is not the correct slide I 02:54:13

6 should be asking about, why don't you direct me to 02:54:17

7 the slide I should be asking about, so you can tell 02:54:19

8 me what it is that you told the attendees as to when 02:54:23

9 a document is protected by the attorney-client 02:54:25

10 privilege. 02:54:28

11 A. Okay. Back up one. And this is 02:54:29

12 difficult -- this is difficult because the animation 02:54:32

13 is not there. 02:54:34

14 Q. Okay. 02:54:35

15 A. And guys on the phone, I'm really sorry 02:54:37

16 about this because you're going to have no idea what 02:54:39

17 I'm talking about. 02:54:41

18 So, this is the picture -- I've got to 02:54:43

19 slow down talking to you. I'm so sorry. I'll slow 02:54:45

20 down. 02:54:48

21 Underneath there, you see two -- it looks 02:54:49

22 like tin cans, underneath the images. 02:54:51

23 Q. Yes, I see that. Yes. 02:54:55

24 A. Do you see that? 02:54:55

25 Q. Uh-huh. 02:54:56

1 A. So, that's the first image that pops up on 02:54:56
2 the slide, and I'm walking through the elements, and 02:55:00
3 there's a string between those two cans. 02:55:02

4 I say: What does the attorney-client 02:55:04
5 privilege cover? It covers a communication. It 02:55:06
6 could be any kind of communication. It could be a 02:55:08
7 conversation. It could be an email. It can be a 02:55:11
8 memo. It could be a Wickr. It could be a -- a -- 02:55:14
9 whatever it is, it just has to be a communication. 02:55:17

10 And then I say: Next element, it has to 02:55:21
11 be between a lawyer, our little law dog main guy 02:55:23
12 pops up here, and a client. And our little dog with 02:55:29
13 glasses over there pops up. All right? So then 02:55:34
14 I've got them following along. 02:55:37

15 You can't see this really at all, but you 02:55:39
16 see it looks like there's a top of a road sign that 02:55:40
17 pops up there, and I say: It has to be of and 02:55:43
18 concerning legal advice. 02:55:50

19 And the sign post is up there, and it has 02:55:51
20 help, support, advice, blah, blah, blah. I give 02:55:54
21 some examples about it. These other images you 02:55:59
22 cannot see here, but I think there's a dog that 02:56:02
23 looks very embarrassed like it did something wrong. 02:56:05
24 There's another one of a dog biting the finger 02:56:08
25 there. And then there's Kujo in the cage down at 02:56:12

1 the bottom there. 02:56:15

2 So, I'm giving them examples of what is of 02:56:15

3 and concerning legal advice. Well, it could be 02:56:18

4 broad, it could be narrow, but it's usually 02:56:20

5 something where you're thinking, man, I've got to 02:56:22

6 talk to a lawyer. 02:56:24

7 There's somebody in the lobby who has 02:56:25

8 chained himself to a bench and they're protesting, 02:56:28

9 and you're calling me for -- what are we going to do 02:56:32

10 to remove them, right? How do we engage with law 02:56:36

11 enforcement? 02:56:40

12 There's somebody -- somebody has -- 02:56:40

13 there's been a horrific homicide in the city that we 02:56:43

14 are operating in, and the -- and we need to -- we 02:56:49

15 need to mobilize to get information to law 02:56:53

16 enforcement. 02:56:56

17 There's a contract that you've worked on 02:56:57

18 that you think has maybe been breached. 02:56:58

19 So, those are the examples that I go 02:57:02

20 through with this. 02:57:03

21 And then the last dog, our -- our bulldog 02:57:04

22 here pops out, and I said: It cannot be used to 02:57:08

23 commit a crime or fraud. 02:57:11

24 Q. That's the dog with the sunglasses? 02:57:14

25 A. Yeah, that's our gangster bulldog there. 02:57:18

1	Pretty nefarious, huh?	02:57:21
2	Q. Did you provide any other guidance other	02:57:24
3	than the guide you just described?	02:57:27
4	A. Yes. I continue through the deck.	02:57:31
5	Q. On this slide regarding generally the	02:57:32
6	contours of attorney-client privilege?	02:57:34
7	A. So, that's it in a nutshell. Now, because	02:57:38
8	I don't follow a book when I'm presenting these	02:57:42
9	things, certainly there's some variance. It would	02:57:44
10	be unlikely I used the exact same examples and	02:57:48
11	certainly not the same language each time.	02:57:51
12	MS. TARAIZI: Let's go off the record.	02:57:54
13	THE VIDEOGRAPHER: Off the record.	02:57:57
14	2:55 p.m. This is the end of Media Unit No. 3.	02:57:57
15	(Thereupon, a recess was taken, after	02:58:18
16	which the following proceedings were held:)	02:58:18
17	THE VIDEOGRAPHER: We are back on the	03:03:11
18	record at 3:01 p.m. This is the beginning of	03:03:11
19	Media Unit No. 4.	03:03:14
20	BY MS. TARAIZI:	03:03:16
21	Q. Mr. Clark, did you ever instruct the	03:03:16
22	employees to be over-inclusive in their privilege	03:03:19
23	designations?	03:03:22
24	MS. GOODMAN: You may answer that	03:03:26
25	question.	03:03:27

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1	THE WITNESS: No. This is, I hope,	03:03:28
2	demonstrating the exact opposite. It is	03:03:36
3	meaningless to do so. Ultimately, an arbitrary	03:03:43
4	of what is privileged or not privileged is a	03:03:44
5	judge. And the designation and the propriety	03:03:50
6	of those designations are done by outside	03:03:54
7	counsel, typically, who are doing productions.	03:03:56
8	BY MS. TARAZI:	03:03:58
9	Q. Let's turn to the slide that's Bates	03:04:04
10	stamped 340312.	03:04:06
11	A. 340312.	03:04:10
12	Q. Two pages on.	03:04:14
13	A. Yes.	03:04:15
14	Q. So, again, I don't really want to try to	03:04:15
15	read through the X here, but I believe what it --	03:04:20
16	but I'm going to do it anyway. I believe what the	03:04:22
17	email underneath the X states that I'm happy to --	03:04:25
18	A. I'm happy to report that the -- hmm.	03:04:31
19	Q. Something for department performance?	03:04:38
20	A. Yeah.	03:04:41
21	Q. Are --	03:04:42
22	A. Oh, yeah. I can give you the gist of	03:04:44
23	this.	03:04:46
24	Q. Sure, that would be really helpful.	03:04:46
25	A. So, this is -- see, you've got the From	03:04:48

1 and To. So, it's from legal bud. I don't know if 03:04:50
2 I -- no. It's legal budget. So, legal budget. And 03:04:53
3 it's coming from the legal budget person to Johnny 03:04:58
4 Law, who is senior counsel of whoever, and it's an 03:05:02
5 operations update and attorney-client privileged. 03:05:05
6 And it says, "I'm happy to report" -- you 03:05:10
7 know, whatever. This is about budget and spend for 03:05:12
8 outside counsel, and it's -- the budget for outside 03:05:15
9 counsel has declined. 03:05:19
10 Q. The written transcript will not reflect 03:05:21
11 that, but there was a note of pride in your voice. 03:05:24
12 Outside counsel found, amusing. 03:05:31
13 A. And it's -- it's marked "privileged" and 03:05:37
14 then I -- I'm sorry, there's no question pending. 03:05:39
15 Why don't you ask. 03:05:42
16 Q. I think you guessed where I was going, 03:05:43
17 which was, this is an example of the kind of 03:05:45
18 communication that you instructed attendees at the 03:05:48
19 presentation would not be privileged? 03:05:50
20 A. This gets the red X. 03:05:53
21 Q. Indicating that it was not privileged? 03:05:57
22 A. Correct. 03:05:59
23 Q. And I think we covered this earlier: Does 03:06:00
24 the red X on the prior page also indicate that this 03:06:04
25 is a communication that you did not -- that you 03:06:07

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1 instructed the attendees at the presentation would 03:06:10
2 not be considered privileged? 03:06:12

3 A. Correct. 03:06:15

4 Q. That was a very long sentence. 03:06:18

5 The next page, the page marked 313, the 03:06:23

6 subject line of that email looks like it needs 03:06:28

7 your -- an A. Is that "advice" under there? 03:06:32

8 A. I think so. 03:06:34

9 Q. I don't want you to guess. 03:06:37

10 A. I need your -- yeah, ASAP. Maybe I need 03:06:39

11 your advice, need your advice ASAP, or something to 03:06:45

12 that effect. 03:06:49

13 Q. Is this an example of a communication that 03:06:49

14 you instructed attendees would be considered 03:06:54

15 privileged? 03:06:58

16 A. I will walk you through and give you a 03:06:59

17 little context. This one I try to get a little 03:07:01

18 tricky with them. 03:07:04

19 So, I've got it coming from the bis dev 03:07:05

20 department, once again, to Johnny Law, who I think 03:07:07

21 is only counsel this time. Poor Johnny. 03:07:09

22 It says: I need your advice. It says: 03:07:11

23 I'm concerned about a something deal. Is the 03:07:14

24 indemnity provision okay? 03:07:16

25 What does everybody think? And so some 03:07:19

1 people who -- no matter what they say, I say: But 03:07:23
2 it's not marked. It's not marked privileged. 03:07:25
3 They go: Oh, yeah. 03:07:28
4 I said green check. It's still 03:07:31
5 privileged. The marking means nothing. The marking 03:07:32
6 is irrelevant to whether a communication qualifies 03:07:36
7 for privileged treatment. 03:07:40
8 Q. Let's turn to the next slide. 03:07:44
9 A. I love Fido over here. 03:07:49
10 Q. I'm really getting a sense of your love of 03:07:52
11 dogs in general -- 03:07:54
12 A. Agree. 03:07:55
13 Q. -- in your presentations. 03:07:57
14 Are these various quotes scattered over 03:07:59
15 the next two slides quotes that you discussed with 03:08:01
16 the attendees at the presentation? 03:08:08
17 A. Yes. So, again, there's animation here 03:08:10
18 that obviously doesn't come through on the printout, 03:08:13
19 but, so, all you have coming up first is this chain 03:08:15
20 of dogs. 03:08:19
21 So, we've got -- we've got a big old 03:08:20
22 bulldog over here who's -- and I give them a little 03:08:25
23 setup. So, there's no red Xs and there's no green 03:08:27
24 checkmarks at this point. So, they're just looking 03:08:30
25 at it and I take them through this. 03:08:33

1 Here is our bulldog. He's an outside 03:08:35
2 vendor, and he's negotiating a contract with our bis 03:08:39
3 dev dog here. And them bis dev dog communicates 03:08:41
4 with Fido, who gives his advice and very sensitive 03:08:49
5 strategy back to bis dev dog, and then bis dev 03:08:52
6 dog -- that's got to be driving the court reporter 03:08:59
7 crazy -- and then bis dev dog sends it over as an 03:08:59
8 FYI, in case you are interested, and he sends it to 03:09:06
9 this group, the round table dogs down below. 03:09:09
10 So, I walk them through each stage and 03:09:12
11 say: Okay, what do you guys think? Is this 03:09:14
12 privileged? Is this not privileged? 03:09:17
13 So, the first one gets a red X. It's an 03:09:21
14 arm's length negotiation. An outsider. 03:09:23
15 Here, we've got bis dev dog and Fido going 03:09:26
16 back and forth. It seems like all the elements are 03:09:30
17 there. 03:09:33
18 Then I say: Look, it's unclear. I don't 03:09:33
19 know these -- who the round table dogs are. Are 03:09:35
20 they internal people? Are they external people? Do 03:09:38
21 they need to know these things? Should they have 03:09:42
22 been included in the first place? 03:09:44
23 This is where, remember, guys, law does 03:09:46
24 not equal science. Law does not equal math. There 03:09:48
25 are -- there are states, and the evidence laws in 03:09:51

1 states are different. Everywhere, judges may look 03:09:55
2 at the same set of facts and come to different 03:09:59
3 conclusions. So, it's tenuous, but we're going to 03:10:01
4 give it a no. 03:10:04
5 Q. Let's turn to the next slide, marked 316, 03:10:06
6 then. 03:10:11
7 A. Yes. I'm sorry. 316? 03:10:11
8 Q. Sorry. Two after the one you were just 03:10:16
9 describing. 03:10:18
10 A. Okay. 03:10:20
11 Q. What did you tell the participants when 03:10:22
12 you showed them this slide? 03:10:25
13 A. So, I was giving them a real world, 03:10:27
14 close-to-home, hard-hitting example of illustrating 03:10:29
15 the points that I've gone through on privilege; that 03:10:32
16 ultimately it's a judge that makes decisions about 03:10:35
17 whether something is privileged or not. 03:10:38
18 Q. Did you discuss the Meyer case with them 03:10:39
19 in connection with this slide or the next slide? 03:10:43
20 A. Briefly, yes. 03:10:47
21 Q. What did you tell them? 03:10:47
22 A. I told them that it was a situation where 03:10:48
23 the -- the -- there was a request to -- this is -- 03:10:51
24 I'm sorry, I have to check with counsel, like how -- 03:10:57
25 is that any different? You've waived on the entire 03:11:01

1 presso, yeah. 03:11:05

2 MS. GOODMAN: The question is: What did 03:11:07

3 you tell them about these next two slides? You 03:11:08

4 can answer that question. 03:11:10

5 THE WITNESS: Okay. So, I gave them a 03:11:11

6 brief synopsis of the -- of the facts in Meyer 03:11:13

7 and the -- and the side show that was the -- 03:11:16

8 that ultimately was litigated, and I walked 03:11:24

9 them through Judge Rakoff's order, or at 03:11:27

10 least -- I didn't walk them through every page. 03:11:33

11 In fact, this -- I didn't walk them through 03:11:38

12 every page of the order. I gave them a little 03:11:39

13 bit of background on that and highlighted -- 03:11:41

14 I'm sorry. Do you want me to keep going? Do 03:11:44

15 you have a question? 03:11:47

16 BY MS. TARAZI: 03:11:47

17 Q. Well, I was going to ask you a question 03:11:47

18 about the next slide, which is a slide marked 317. 03:11:49

19 It looks like you boxed out a portion of the order 03:11:51

20 in the Meyer case. 03:11:55

21 A. I did. 03:11:57

22 Q. And the portion of the order you boxed out 03:11:58

23 is -- the full, complete sentence in that box reads, 03:12:00

24 "The question here however" -- 03:12:03

25 A. Do you want me to read it? 03:12:10

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1 Q. "The questions here presented, however, 03:12:11
2 are whether such dubious practices in waiver result 03:12:14
3 in waiver of attorney-client privilege and work 03:12:17
4 product protection and whether disciplinary action 03:12:21
5 is warranted." 03:12:23

6 My version is very faint. 03:12:25

7 A. Yes, you read it correctly. 03:12:28

8 Q. What did you tell the participants about 03:12:30
9 that? 03:12:31

10 A. So -- so, I'm illustrating the prior -- 03:12:32
11 now we've come full circle, and we're -- we've got a 03:12:34
12 judge that is examining privileged documents to 03:12:38
13 determine -- in camera to determine whether or not 03:12:45
14 they are, in fact, privileged. 03:12:47

15 Q. Let's turn to the next slide. It reads -- 03:12:57
16 the underlying portion reads: "Uber and Ergo" -- 03:13:00
17 who is Ergo? 03:13:06

18 A. Ergo was a vendor. 03:13:08

19 Q. What services did the vendor provide? 03:13:10

20 A. They provided some investigative services. 03:13:13

21 Q. To who at Uber? 03:13:16

22 A. To Uber. 03:13:19

23 Q. To anyone in particular at Uber? 03:13:19

24 A. To the -- I think the -- well, to the 03:13:21
25 security group. 03:13:24

1 Q. To the Threat Ops Group? 03:13:25

2 A. To Threat Ops, yes. 03:13:27

3 Q. And Threat Ops to SSG? 03:13:28

4 A. No, this may have been before SSG. 03:13:32

5 Q. To Market Analytics? 03:13:35

6 A. No. 03:13:36

7 Q. Just generally Threat Ops? 03:13:37

8 A. This is the -- this would be more -- yes, 03:13:38

9 just generally Threat Ops. This is very early in my 03:13:43

10 tenure. 03:13:48

11 Q. "Uber and Ergo claimed attorney-client 03:13:48

12 privilege and/or work product protection over 03:13:52

13 numerous documents and voice recordings, and the 03:13:52

14 Court indicated it would need to review the 03:13:54

15 materials in camera to determine whether privilege 03:13:57

16 was correctly ascertained and/or whether the crime 03:13:59

17 fraud exception to the privilege applied." 03:14:02

18 What did you tell participants about that 03:14:04

19 slide? 03:14:07

20 A. So, I just walked them through this, and, 03:14:07

21 again, I'm saying: Look, you've got a federal judge 03:14:08

22 who has issued -- this was a fairly long order, and 03:14:12

23 I think it was a 31-page-order, or something like 03:14:15

24 that -- a 31-page order. Upfront and center, on the 03:14:18

25 first page of the order, is where he's going. 03:14:22

1 And I'm kind of showing them: Look, now, 03:14:24
2 the judge is saying he's got all the documents in 03:14:28
3 front of him, and he's going to look at them and see 03:14:31
4 if it meets the elements of privilege, and he's 03:14:33
5 going to see if the crime fraud exception applies to 03:14:36
6 vitiate the privilege. 03:14:42

7 Q. What did you tell the participants in 03:14:46
8 connection with the next slide? 03:14:49

9 A. So these are -- I'm looking at Bates 03:14:51
10 ending in 319; is that correct? 03:14:54

11 Q. That's correct. 03:14:56

12 A. So, I'm showing, saying: These are 03:14:59
13 clippings that were taken straight from media 03:15:01
14 reports of the -- of this case. 03:15:04

15 So -- and here you have -- you can see on 03:15:07
16 the -- the screen capture that's on the reader's 03:15:10
17 left. There is a message from Salle Yoo to Joe 03:15:16
18 Sullivan that has an antitrust lawsuit, SDNY against 03:15:21
19 Travis. 03:15:27

20 It's got -- the next text is 03:15:27
21 attorney-client communication-privilege. Salle 03:15:30
22 writing to Joe: Joe, can we find out a little more 03:15:33
23 about this plaintiff? 03:15:36

24 Joe responds. Joe sends it to Mat and 03:15:37
25 says: Please do a careful check on the plaintiff, 03:15:40

1 the one who is the driver named -- part of the case. 03:15:42

2 Q. Is that Spencer Meyer? 03:15:46

3 A. Yes, yes. 03:15:50

4 But what I'm illustrating from this is, 03:15:52

5 like, here's a communication that is marked 03:15:54

6 privileged from the general counsel to Joe Sullivan. 03:15:56

7 And it's been disclosed in the case, and it is -- 03:15:59

8 and it is in the news. 03:16:02

9 So, to the extent I hope I disabused 03:16:04

10 everybody of the notion of marking something 03:16:07

11 privileged is going to somehow magically protect 03:16:09

12 them. 03:16:13

13 Q. The topping off from Joe Sullivan to Mat 03:16:13

14 Henley reads, and it's a little hard to read on my 03:16:15

15 copy, but I think it says, "Please do a careful 03:16:15

16 check on this plaintiff, the person who is the 03:16:19

17 driver named party in the case." 03:16:21

18 Is it Uber's general practice to do a 03:16:23

19 careful check on plaintiffs in litigation against 03:16:25

20 Uber? 03:16:28

21 MS. GOODMAN: Object to form. 03:16:30

22 You can answer that question, but that is 03:16:36

23 way outside the scope of this case. 03:16:36

24 THE WITNESS: I can't comment on general 03:16:38

25 practice. It is good security practice to 03:16:40

1 investigate people who may be a threat to Uber, 03:16:43
2 to Uber's riders and drivers, and certainly to 03:16:45
3 executives of the company. 03:16:49
4 BY MS. TARAIZI: 03:16:50
5 Q. Did Uber do a careful check of Waymo? 03:16:50
6 MS. GOODMAN: Object to form. 03:16:55
7 THE WITNESS: I am unaware of any 03:16:57
8 investigations with respect to -- I don't even 03:16:59
9 know how to answer that question. I mean, I 03:17:04
10 don't know. 03:17:08
11 MR. STUMPHAUZER: Talking about Waymo. 03:17:10
12 That's progress. 03:17:11
13 BY MS. TARAIZI: 03:17:13
14 Q. Did Uber do a careful check of Google? 03:17:13
15 MS. GOODMAN: Object to form. 03:17:17
16 THE WITNESS: Not to my knowledge. 03:17:18
17 BY MS. TARAIZI: 03:17:19
18 Q. If you turn over two pages, or maybe 03:17:19
19 three, to the one marked 322, it looks like a 03:17:21
20 picture of Edward Snowden. 03:17:25
21 What did you tell -- 03:17:26
22 A. Let me get there. Let me get there. 03:17:31
23 Q. -- the people that you presented this deck 03:17:31
24 to -- 03:17:34
25 A. So, I think it's -- what did I tell them 03:17:34

1 about? Hopefully, the image speaks for itself. 03:17:36

2 So, we're kind of -- so, underneath the 03:17:44

3 picture of Snowden is the famous picture of Hillary 03:17:47

4 Clinton on her BlackBerry with her sunglasses on, 03:17:51

5 right? So, this is before the election, and so 03:17:55

6 it's -- I mean, it was a different time. 03:17:57

7 And I say, you know: Look, emails are 03:18:01

8 everywhere. Emails are -- can be taken out of 03:18:05

9 context. There's important things in emails that 03:18:09

10 people write all the time. And guess what? Snowden 03:18:14

11 pops up. There's always somebody out there that's 03:18:18

12 going to read them. 03:18:21

13 Q. Do you know who Rick Jacobs is? 03:18:22

14 A. Yes, I do. 03:18:25

15 Q. Did you work with him? 03:18:25

16 A. He worked in Threat Ops. I was a lawyer 03:18:29

17 embedded with Threat Ops. So, yes, projects we 03:18:32

18 worked on. 03:18:34

19 Q. What kind of projects did you work on? 03:18:36

20 A. Oh, I don't -- am I -- can I talk about -- 03:18:38

21 I guess you could talk about subtopics. 03:18:47

22 MS. GOODMAN: You can answer that question 03:18:49

23 as a general subject matter level that would be 03:18:50

24 on a privilege log, what kind of things did you 03:18:53

25 work with him on. 03:18:58

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1 states: "Early in his tenure, Jacobs advocated for 03:44:24
2 a secure and encrypted centralized database to 03:44:26
3 ensure confidentiality and recordkeeping, but 03:44:29
4 provide access to intelligence for Threat Ops 03:44:32
5 personnel. He presented a draft proposal to 03:44:35
6 managers Henley and Clark." 03:44:37

7 I don't think this is what is meant here, 03:44:41
8 but you did not manage Mr. Jacobs, correct? 03:44:42

9 A. I did not manage Mr. Jacobs. 03:44:47

10 Q. Do you recall receiving a draft proposal 03:44:51
11 for a centralized database? 03:44:53

12 A. Not specifically, no. 03:44:56

13 Q. Do you remember discussing the centralized 03:44:58
14 database referenced on page 5 of the Jacobs letter? 03:45:02

15 A. I don't know what Jacobs is referencing on 03:45:07
16 page 5. And the sentence that you just read, while 03:45:08
17 I do recall a centralized -- a desire for a 03:45:11
18 centralized database that Mat Henley wanted to get 03:45:15
19 done, that I believe Jacobs was tasked to complete. 03:45:21

20 Q. Did you object to the creation of such a 03:45:30
21 database? 03:45:32

22 MS. GOODMAN: You can answer that 03:45:35
23 question. 03:45:36

24 THE WITNESS: No. 03:45:36

25

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1	acquisition --	03:55:19
2	MR. STUMPHAUZER: No. This one is, did	03:55:20
3	you provide guidance.	03:55:21
4	MS. GOODMAN: Did you provide guidance.	03:55:23
5	I'm sorry, the live feed is not accurately	03:55:25
6	reflecting your question, so, could you please	03:55:27
7	repeat it?	03:55:32
8	BY MS. TARAIZI:	03:55:33
9	Q. Did you provide guidance to SSG with	03:55:33
10	respect to the acquisition of non-attributable	03:55:35
11	hardware?	03:55:38
12	MS. GOODMAN: Right. And that question	03:55:39
13	calls for legal advice, and I instruct you not	03:55:40
14	to answer.	03:55:42
15	MS. TARAIZI: Same instruction if I ask	03:55:45
16	about software?	03:55:47
17	MS. GOODMAN: What are you going to ask	03:55:52
18	about software?	03:55:53
19	BY MS. TARAIZI:	03:55:54
20	Q. Did you provide guidance to SSG with	03:55:54
21	respect to the acquisition of non-attributable	03:55:56
22	software?	03:55:59
23	MS. GOODMAN: Same instruction.	03:55:59
24	BY MS. TARAIZI:	03:56:03
25	Q. Are you aware of Uber storing data on	03:56:09

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1	non-attributable devices to avoid detection,	03:56:13
2	including in connection with legal discovery?	03:56:15
3	THE WITNESS: Counsel for Uber?	03:56:20
4	MS. GOODMAN: You may answer that	03:56:24
5	question.	03:56:25
6	THE WITNESS: No.	03:56:25
7	BY MS. TARAIZI:	03:56:25
8	Q. Under heading C, the heading is	03:56:32
9	"Concealment, Cover-Up and Falsification of Records	03:56:37
10	Through the Abuse of Attorney-Client Privilege	03:56:41
11	Designations."	03:56:43
12	In the second paragraph, the second	03:56:50
13	sentence, beginning "during the presentation," it	03:56:52
14	states: "Clark verbally coached the participants on	03:56:55
15	how to use attorney-client privilege to ensure	03:56:57
16	sensitive intelligence collection activities would	03:56:59
17	not surface in litigation."	03:57:03
18	Is that correct?	03:57:05
19	THE WITNESS: Counsel for Uber?	03:57:06
20	MS. GOODMAN: You may answer that.	03:57:07
21	THE WITNESS: Sorry?	03:57:09
22	MS. GOODMAN: You may answer that.	03:57:09
23	THE WITNESS: No.	03:57:10
24	BY MS. TARAIZI:	03:57:10
25	Q. The next sentence reads: "Clark also	03:57:10

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1 redacted. 04:53:50

2 THE WITNESS: Counsel? 04:53:51

3 MS. GOODMAN: Object to form. And, again, 04:53:52

4 you're asking a question, does Mr. Clark 04:53:53

5 understand whether Uber worked unlawfully to 04:53:56

6 obtain trade secrets generally. 04:53:59

7 You cannot ask that question without 04:54:01

8 asking him to reveal his legal conclusions and 04:54:03

9 mental judgments. 04:54:05

10 Also, the question has nothing to do -- 04:54:06

11 or the part of the letter from which you are 04:54:08

12 reading has nothing to do with Waymo, and the 04:54:10

13 thing is, there's a redaction about who 04:54:12

14 Mr. Jacobs is alleging in this context. That's 04:54:16

15 not relevant to this case. So, you should move 04:54:19

16 on. 04:54:21

17 BY MS. TARAZI: 04:54:24

18 Q. Are you aware of Uber ever remotely 04:54:24

19 accessing confidential corporate communications and 04:54:27

20 data from Waymo? 04:54:31

21 MS. GOODMAN: If you can answer that 04:54:33

22 question without revealing information in the 04:54:34

23 course of an attorney-client communication, 04:54:36

24 then go ahead and do so. 04:54:43

25 THE WITNESS: No. 04:54:45

1 probably much more than that.

2 Q. Did any litigation hold that you received

3 in connection with the Jacobs allegation instruct

4 you not to use Wickr to discuss the case?

5 A. I don't recall the specific hold. I need

6 to see it. But it should be in my documents.

7 Q. Do you recall ceasing to use Wickr to

8 discuss Jacobs' allegations after receiving the

9 litigation hold?

10 A. Yes. I would not discuss the substance of

11 a matter that was on legal hold on an ephemeral

12 communication tool.

13 Q. Did you turn over your personal cell phone

14 in connection with the litigation hold placed in

15 connection with the Jacobs matter?

16 MS. GOODMAN: Objection, asked and

17 answered.

18 THE WITNESS: No.

19 MS. TARAIZI: For the record, I have

20 withdrawn the exhibit previously marked as

21 Exhibit 9712.

22 BY MS. TARAZI:

23 Q. Did you have any -- did you ever play --

24 strike that. I'll start again.

25 Did you play any role in investigating the

1	allegations in the Jacobs letter?	05:16:26
2	A. I was interviewed. My machine was imaged.	05:16:29
3	Q. Who were you interviewed by?	05:16:35
4	A. Lawyers from WilmerHale.	05:16:37
5	Q. Were you interviewed by anyone in-house at	05:16:45
6	Uber in connection with that investigation?	05:16:50
7	A. I was with Angela Padilla and a lawyer	05:16:55
8	from Littler, as well. I believe she was from	05:16:58
9	Littler.	05:17:01
10	Q. From Littler?	05:17:02
11	A. Littler Mendelson. It's a law firm.	05:17:03
12	Q. And, also, you said by WilmerHale?	05:17:06
13	A. Yes.	05:17:11
14	Q. Are you aware of who at Uber was involved	05:17:12
15	in the investigation into the Jacobs allegations?	05:17:15
16	THE WITNESS: Counsel?	05:17:19
17	MS. GOODMAN: The question is, if you	05:17:20
18	know, who at Uber was involved in the	05:17:21
19	allegations and the investigation of the Jacobs	05:17:24
20	allegations.	05:17:27
21	THE WITNESS: So, I don't know everybody	05:17:28
22	that was involved, but I can give you names of	05:17:29
23	people who I believe were involved. Is that	05:17:32
24	what you would like me to do?	05:17:35
25		

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1 cannot do of a lawyer. 06:57:13

2 BY MS. TARAIZI: 06:57:17

3 Q. Did Uber use non-attributable devices to 06:57:23

4 perform competitive intelligence on Uber -- I'm 06:57:26

5 sorry, on Waymo? 06:57:31

6 MS. GOODMAN: You can answer that question 06:57:33

7 if you can do so without revealing the contents 06:57:34

8 of an attorney-client communication. 06:57:37

9 THE WITNESS: I don't know what you mean 06:57:41

10 by "unattributable device," but not to my 06:57:42

11 knowledge. 06:57:45

12 BY MS. TARAIZI: 06:57:45

13 Q. Did Uber use any devices that could not be 06:57:45

14 traced to Uber to perform competitive intelligence 06:57:48

15 on Waymo? 06:57:51

16 MS. GOODMAN: Object to the form. 06:57:54

17 Same instruction with regard to the 06:57:54

18 privilege. 06:57:56

19 THE WITNESS: Not to my knowledge. 06:57:57

20 BY MS. TARAIZI: 06:57:59

21 Q. Did Uber use any devices that could not be 06:57:59

22 attributed to Uber to perform competitive 06:58:02

23 intelligence on Google? 06:58:05

24 MS. GOODMAN: Object to the form. 06:58:07

25 Same instruction regarding the privilege. 06:58:08

1 THE WITNESS: Not to my knowledge. 06:58:10

2 BY MS. TARAIZI: 06:58:20

3 Q. Have you ever heard the phrase, 06:58:21

4 "augmented, non-attributable Internet collection"? 06:58:22

5 MS. GOODMAN: Yes or no? 06:58:28

6 THE WITNESS: No. 06:58:31

7 BY MS. TARAIZI: 06:58:31

8 Q. Has Uber ever used vendors to perform 06:58:31

9 competitive intelligence tasks using devices that 06:58:35

10 could not be attributed to Uber? 06:58:38

11 MS. GOODMAN: Same instruction with 06:58:41

12 respect to the privilege. 06:58:42

13 THE WITNESS: Not to my knowledge. 06:58:47

14 BY MS. TARAIZI: 06:58:52

15 Q. Who was involved in the competitive 06:58:53

16 intelligence gathering that Uber conducted of Waymo? 06:58:57

17 When I say "Waymo" in this context, I'm referring to 06:59:05

18 Waymo and Google's self-driving car division. 06:59:08

19 THE WITNESS: Counsel for Uber? 06:59:13

20 MS. GOODMAN: Object to the form of the 06:59:16

21 question. 06:59:17

22 You may answer that to the extent you can 06:59:17

23 do so without revealing the contents of an 06:59:19

24 attorney-client communication. 06:59:22

25 THE WITNESS: Okay. Can you re-ask the 06:59:23

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1 Q. Do you have any knowledge that anyone in 07:27:23
2 the autonomous vehicle group at Uber ever 07:27:25
3 purposefully labeled a document as privileged in 07:27:28
4 order to hide it from the court overseeing this 07:27:30
5 litigation? 07:27:33

6 A. I'm sorry, can you -- can you -- can you 07:27:34
7 reword it? 07:27:36

8 Q. Do you have any knowledge that anyone in 07:27:37
9 the autonomous vehicle group at Uber ever 07:27:39
10 purposefully labeled a document as privileged in 07:27:42
11 order to hide it from the court overseeing this 07:27:44
12 litigation? 07:27:47

13 A. No. 07:27:48

14 Q. Did you ever mark a document as 07:27:51
15 "attorney-client privileged" in order to hide it 07:27:52
16 from Waymo or Google? 07:27:57

17 A. No. 07:27:58

18 Q. Would you ever do that? 07:27:58

19 A. No. 07:27:59

20 Q. Did you ever direct anyone to destroy 07:28:00
21 evidence? 07:28:03

22 A. No. 07:28:03

23 Q. I would like to show you a document that 07:28:05
24 we will mark 9715. This is a document bearing Bates 07:28:08
25 label UBER 00355965, which I understand is being 07:28:29

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1	introduced to Waymo today in connection with a	07:28:33
2	variety of discovery requests that they have put on	07:28:37
3	us at this close of discovery.	07:28:39
4	Do you have the document in front of you?	07:28:41
5	A. I don't have it. You didn't give the	07:28:46
6	court reporter a chance to mark it.	07:28:47
7	(The referred-to document was marked by	07:28:58
8	the court reporter for Identification as	07:28:58
9	Deposition Exhibit 9715.)	07:28:58
10	BY MS. GOODMAN:	07:29:01
11	Q. I ask you to review this document.	07:29:03
12	(A discussion was held off the record,	07:29:46
13	after which the following proceedings were	07:29:46
14	held:)	07:29:46
15	BY MS. GOODMAN:	07:29:54
16	Q. Have you had a chance?	07:29:54
17	A. Almost.	07:29:55
18	Q. Okay.	07:29:56
19	A. Yes, I read the document.	07:30:27
20	Q. All right. I will direct your attention	07:30:28
21	to page 966, the bottom of the email string.	07:30:30
22	Alberto Fittarelli writes, "Craig, for	07:30:33
23	your review and legal advice. Thanks, Nicoletta.	07:30:38
24	Appreciate it."	07:30:40
25	Do you see that?	07:30:42

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1 A. I do. 07:30:42

2 Q. And you respond, "This really shows the 07:30:42

3 use of the A/C priv statement like we talked about 07:30:42

4 last week. Is thanking her really for my review and 07:30:46

5 advice? It just proves overuse." 07:30:49

6 What did you mean by that? 07:30:51

7 A. Well, I meant that this is -- I don't see 07:30:54

8 the elements of privilege in this. 07:30:57

9 I think I was -- you know, Alberto is 07:31:00

10 Italian, and I think the -- and in Europe, and so I 07:31:02

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11 think -- look, the concept of privilege is hard 07:31:06
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12 enough for Americans who have dealt with it, and 07:31:10

13 it's -- it's -- I think people who are not of the 07:31:14

14 United States have a much more difficult time. So, 07:31:17

15 I'm trying to make my point. 07:31:19

16 I think I was -- looking at this, I think 07:31:21

17 I was pretty frustrated with Alberto on this. It 07:31:24

18 must have been close in time to a presentation that 07:31:28

19 I gave. 07:31:29

20 So, I -- what I'm showing here is that 07:31:31

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21    it's -- the label means nothing.                                07:31:36
```

22 Q. And if you look at page -- the first page, 07:31:40

23 965, after you and Mr. Fittarelli have an exchange 07:31:42

24 about the use of privilege, you forward the string 07:31:50

25 to Rick@Uber.com. Is that Mr. Jacobs? 07:31:54

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1 A. It appears to be. 07:31:58

2 Q. And you say to him, "I had a long talk 07:32:00

3 with Alberto this morning. I was disheartened by 07:32:02

4 the fact that my legal priv training did not sink 07:32:05

5 in, even though this is almost identical to an 07:32:09

6 example I had them all discuss and go through." 07:32:11

7 Why did you share with Mr. Jacobs the fact 07:32:15

8 that you were disheartened that your legal priv 07:32:20

9 training did not sink in to Mr. Fittarelli? 07:32:22

10 A. Jacobs was Mr. Fittarelli's manager. 07:32:25

11 Q. And you wanted his manager to know to get 07:32:27

12 feedback about this? 07:32:31

13 A. Yeah. It's frustrating when you spend all 07:32:32

14 of that time and fight all these dogs to put 07:32:35

15 together in a deck. 07:32:38

16 Q. You see the top email is from Rick Jacobs 07:32:41

17 to [REDACTED]? 07:32:44

18 A. Yes. 07:32:48

19 Q. And I noticed when you were reviewing this 07:32:48

20 document, you might have chuckled to yourself. I'm 07:32:50

21 wondering if you chuckled in response to that 07:32:53

22 forward of the communication from himself to his 07:32:55

23 personal email? 07:32:57

24 A. Yes, I did find that interesting. 07:32:59

25 Q. What do you find interesting about that? 07:33:01

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1 A. Well, this is information -- internal 07:33:03
2 information that he has exfiltrated. 07:33:05

3 Q. And what's the date on Mr. Jacobs' forward 07:33:09
4 to himself? 07:33:12

5 A. April 13, 2017, at 5:50 p.m. 07:33:15

6 Q. Do you recall the date of Mr. Jacobs' 07:33:28
7 resignation email? 07:33:32

8 A. I don't. 07:33:34

9 Q. Do you have Exhibit 9711 in front of you? 07:33:35

10 A. Let me take a look. Ninety-seven what? 07:33:40

11 Q. Eleven. 07:33:44

12 A. Yes. 07:34:01

13 Q. And if you flip to the last -- the page 07:34:02
14 ending 655 -- 07:34:05

15 A. Yes. 07:34:10

16 Q. -- the email from Rick Jacobs that begins 07:34:11
17 sort of a third down the page? 07:34:15

18 A. Yes. 07:34:17

19 Q. Is that his resignation email? 07:34:17

20 A. It appears to be. 07:34:19

21 Q. And what is the date on that? 07:34:21

22 A. April 14, 2017, 10:38 a.m. 07:34:22

23 MS. GOODMAN: No further questions. I 07:34:27
24 pass the question to your counsel. 07:34:29

25 MR. STUMPHAUZER: Actually, I think the 07:34:31

C E R T I F I C A T E

STATE OF FLORIDA)

: ss

COUNTY OF MIAMI-DADE)

I, KELLI ANN WILLIS, a Registered
Professional, Certified Realtime Reporter and
Notary Public within and for The State of
Florida, do hereby certify:

That CRAIG CLARK, the witness whose
deposition is hereinbefore set forth was duly
sworn by me and that such Deposition is a true
record of the testimony given by the witness.

I further certify that I am not related
to any of the parties to this action by blood
or marriage, and that I am in no way interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 26th day of December, 2017.



KELLI ANN WILLIS, RPR, CRR